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IN THE

Supreme Court of the United States

October Term, 1966

No. 830

GRACE LINE, a corporation and SS "SANTA JUANA,"
Petitioners,

v.

MICHAEL J. KANTON,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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BRIEF OF RESPONDENT IN OPPOSITION TO WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Respondent prays that the petition for writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered on September 8, 1966 be denied.

QUESTION PRESENTED

Can a longshoreman maintain an action by libel *in rem* against a vessel owned and operated by his stevedore employer?

STATEMENT OF THE CASE

Respondent, Michael J. Kanton, filed a libel *in rem* against the SS "SANTA JUANA" for personal injuries sustained on November 26, 1961 on board the vessel, resulting from unseaworthiness. Respondent was employed by Grace Line, the owner and operator of the vessel. Jurisdiction in the District Court was based on the occurrence of a maritime tort in navigable waters of the United States.

Respondent received compensation under the Longshoremen's and Harbor Workers' Compensation Act.

Petitioner appealed from a judgment entered in favor of respondent in the District Court. The judgment was offset by the amount of compensation paid to respondent. The Court of Appeals affirmed *per curiam*.

ARGUMENT FOR DENYING THE WRIT

1. *Reed v. The Yaka*, 373 U.S. 410 (1963) permits *in rem* action against a vessel.

Respondent relies on *Reed v. The Yaka* as authority for maintaining this action. The decision erased the artificial distinction existing since *Seas Shipping Co. v. Sieracki*, 328 U.S. 85 (1946), and *Ryan Stevedoring Co. v. Pan-Atlantic Steamship Corp.*, 350 U.S. 124 (1956).

The following language is pertinent, beginning on page 415:

> "We think it would produce a harsh and incongruous result, one out of keeping with the dominant intent of Congress to help longshoremen, to distinguish between liability to longshoremen injured under precisely the same circumstances because some draw their pay directly from a shipowner and others from a stevedoring company doing the ship's service. Petitioner's need for protection from unseaworthiness was neither more nor less than that of a longshoreman working for a stevedoring company. As we said in a slightly different factually context, 'All were subjected to the same danger. All were entitled to like treatment under law.' *Pope and Talbot, Inc. v. Hawn*, 346 U.S. 406, 413 (1953). We conclude that the petitioner was not barred by the longshoreman's act from relying on Pan-Atlantic's liability as a shipowner for the Yaka's unseaworthiness in order to support his *libel in rem* against the vessel."

2. *Reed v. The Yaka* and the instant case are indistinguishable.

Petitioner urges that *Reed v. The Yaka* does not apply here because respondent's employer, Grace Line, was the owner and operator of the SS "SANTA JUANA" and not the owner *pro hac vice*, or bareboat charterer. There is no material distinction between the two forms of ownership. The opinion of Mr. Justice Black clearly recognizes no such distinction.

p. 412:

> "It has long been recognized in the law of admiralty that for many, if not most, purposes the bareboat charterer is to be treated as the owner, generally called owner *pro hac vice*."

ps. 414, 415:

> "In particular, we pointed out several times in the *Sieracki* case, which has been consistently followed since, that a *shipowner's* obligation of seaworthiness cannot be shifted about, limited or escaped by contracts or by the absence of contracts and that the *shipowner's* obligation is rooted, not in contracts, but in the hazards of the work." (Emphasis supplied)

Similar language is found in the opinion of the Court of Appeals in *Reed v. The Yaka*, 307 F.2d 203, (Third Cir. 1962):

> "The case at hand is different only in that the suing longshoreman's employer was a bareboat charterer rather than an owner. But for present purposes that is not a significant distinction. In admiralty such a demisee acquires full control and authority over the ship and the rights and duties which attend such dominion. He takes the owner's place for the term of the demise. *United States v. Shea*, (1894), 152 U.S. 178, 14 S.Ct. 519, 38 L.Ed. 403; *Leary v. United States*, (1871), 81 U.S. (14 Wall) 607, 610, 20 L.Ed.

756 (dictum); Gilmore & Black, op. cit. *supra*, at 215-16."

Applications of the holding to stevedore-employers who were also shipowners or owners *pro hac vice* have been made without difficulty by the District Courts. *Hertel v. American Export Lines*, 225 F.Supp. 703 (S.D.N.Y. 1964), *in personam* action against owner *pro hac vice*. *Miculka v. American Mail Lines, Ltd.*, 229 F.Supp. 665, (D.Ore. 1964) *in rem* action against vessel operated by owner *pro hac vice*. *Course v. Pacific Inland Navigation Company*, 234 F.Supp. 676 (D.Ore. 1964) *in rem* action against vessel or *in personam* action against the vessel owner approved. *Peros v. Grace Line Inc.*, 1966 A.M.C. 1316 (S.D.N.Y. 1966) (On Appeal) action *in rem* against the vessel and at law against the vessel owner approved. *Carroll v. SS "SANTA ROSA"*, 1966 AMC 2051 (S.D.N.Y. 1966) *in rem* action against a vessel permitted. Vessel was operated by owner Grace Line, *Santiago v. Hermands*, 255 F. Supp. 932 (D.C. Puerto Rico 1966) approves *in personam* action against vessel owner or *in rem* action against vessel. Similarly in the State of Louisiana, *in rem* actions against vessels operated by the vessel owner were permitted in *Robinson v. Lykes Bros. SS Co.*, 170 So.2d 243 (La. 1964); *Jackson v. Lykes Bros. SS Co.*, 185 So.2d 342 (La. 1966) cert. denied, 187 So.2d 441.

3. The decision of the court below complied with the provisions of 33 USC § 905-950.

Respondent received his statutory benefits under the Longshoremen and Harbor Workers' Compensation Act. The District Court offset the judgment in the amount received by respondent. The financial burden for the injury

was placed on the party liable for the vessel's unseaworthiness. There was compliance with the Act.

The decision in *Reed v. The Yaka* was within the purview of the Act. It is true that the Act intended to provide immunity to the stevedore-employer from suit by his injured employee in return for providing assured statutory compensation to all injured employees regardless of fault. The key reference, however, is to a *stevedore-employer*. The right of a longshoreman to sue a third party was not abrogated. There was not then nor is there now any economic justification for such abrogation. To circumvent the Act, however, some steamship owners or operators have followed the practice of employing longshoremen directly without resort to available independent stevedore contractors. The intended effect was to remove the right of the injured longshoreman to sue a "third party". *Reed v. The Yaka* eliminated the inequity resulting from the above practice. The holding of this court in *Reed v. The Yaka* was pronounced after careful consideration of the economic factors involved. As intended by the decision, the financial burden arising from the unseaworthiness of a vessel now ultimately rests on the party responsible for the condition. District Courts have found no difficulty in applying the decision. No further clarification of the decision is necessary.

CONCLUSION

For the foregoing reasons, the petition for Writ of Certiorari should be denied.

Respectfully submitted,

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